

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

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: Civil Action No. 07-251(PGS)  
DANITA HAYER, :  
: Plaintiff, :  
: v. :  
: :  
: NOTICE OF APPEAL  
UNIVERSITY OF MEDICINE and : STEPHEN E. KLAUSNER  
DENTISTRY OF NEW JERSEY :  
: Defendant. :

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**NOTICE IS HEREBY GIVEN** that Plaintiff, Danita Hayer, appeals to the United States Court of Appeals for the Third Circuit from the Judgement based upon the JURY VERDICT dated November 19, 2010, the ORAL DECISION dated February 25, 2011 and the ORDER filed February 28, 2001, signed by the Honorable Peter G. Sheridan, U.S.D.J. . (Copy annexed hereto).

STEPHEN E. KLAUSNER, ESQ., LLC  
Attorney for Plaintiff

By: Stephen E. Klausner  
Stephen E. Klausner

Dated: March 28, 2011

CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2011, a true copy of the Notice of Appeal and Certificate of Service was forwarded via ECF filing to:

Honorable Peter G. Sheridan, U.S.D.J.  
MLK Jr. Federal Building & Courthouse  
50 Walnut Street, Room 2D  
Newark, New Jersey 07101

- and -

Pamela Mosley Gresham, DAG  
R.J. Hughes Justice Complex  
P.O. Box 112  
25 Market Street  
Trenton, NJ 08625

By: Stephen E. Klausner  
Stephen E. Klausner  
Attorney for Plaintiff

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

JUDGMENT IN A CIVIL CASE

Danita Hayer  
Plaintiff,

CASE NUMBER: 07 - 251 (PGS)

v.

University of Medicine and  
Dentistry of New Jersey

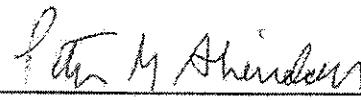
Defendant.

X Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

IT IS ORDERED AND ADJUDGED that a judgment of NO CAUSE FOR ACTION be and is hereby entered in favor of the defendant University of Medicine and Dentistry of New Jersey, and against the plaintiff Danita Hayer.

November 19, 2010

DATE

  
PETER G. SHERIDAN, U.S.D.J.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

DANITA HAYER,

Plaintiff, : Civil Action No. 07-251 (PGS)

v.

**ORDER**

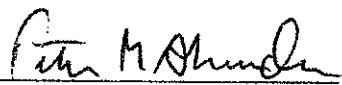
UNIVERSITY OF MEDICINE AND  
DENTISTRY OF NEW JERSEY,

Defendant.

This matter comes before the Court on Plaintiff Danita Hayer's ("Plaintiff") motion to vacate the jury verdict and for a new trial ("Plaintiff's Motion"). The Court, having reviewed the parties' submissions, and for the reasons set forth on the record on February 25, 2011;

IT IS on this 28th day of February 2011,

ORDERED that Plaintiff's Motion (Docket Entry 74) is denied.



PETER G. SHERIDAN, U.S.D.J

**1** UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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DANITA HAYER,  
**4** PLAINTIFF

5 vs.

CIVIL NO.  
07-251 (PGS)

6 UNIVERSITY OF MEDICINE &  
7 DENTISTRY OF NEW JERSEY,  
DEFENDANT

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**DISTRICT OF NEW JERSEY**

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Certified as true and correct as required  
by Title 28, U.S.C. Section 753  
/S/ Francis J. Gable  
FRANCIS J. GABLE, C.S.R., R.M.R.  
OFFICIAL U.S. REPORTER  
(856) 889-4761

1                   THE COURT: This is Hayer versus the University of  
2 Medicine and Dentistry. And Hayer brings a motion for a new  
3 trial and for judgment as a matter of law, after the jury  
4 no-caused her employment discrimination case.

5                   The grounds in Mr. Klausner's brief on behalf of the  
6 plaintiff are, the Court committed reversal error by: (1)  
7 failing to strike testimony and evidence; (2) admitting  
8 documents D-10, D-11 and D-12 into evidence, which violated  
9 Rules 801, 803, 805, and 602 of the rules of evidence; and (3)  
10 because, based upon the evidence, no reasonable jury could  
11 find that Shawn Carr was treated more liberally than Hayer.  
12 According to plaintiff this necessitate that the Court grant a  
13 new trial.

14                  And lastly, Mr. Klausner objects to the procedure  
15 used to select the jury array because the jury array did not  
16 have any African-Americans on it. The plaintiff believes this  
17 violates her right to equal protection under the federal  
18 constitution.

19                  It should be noted that a new trial can be ordered  
20 under Rule 59. The rule indicates that, the court may, on  
21 motion, grant a new trial on all or some of the issues as  
22 follows, "And after a jury trial for any reason for which a  
23 new trial has been heretofore been granted, in any action at  
24 law or in federal court in the past."

25                  It should be noted that with regard to new trial

1 motions, such motions are infrequently given or granted, and  
2 are generally disfavored. And the district court has wide  
3 discretion on ruling on a motion for new trial. Sound  
4 discretion is appropriate since it is the district court that  
5 is able to observe the witnesses and follow the jury in a way  
6 that an appellate court cannot replicate by reviewing the  
7 record. That's at New Jersey Federal Civil Procedure, 2011,  
8 Section 16.3, page 516. So, at any rate, the Court will use  
9 that standard in evaluating this motion.

10 In addition, Mr. Klausner cites to Rule 50, which  
11 allows the Court to judgment as a matter of law in a jury  
12 matter. And with regard to such a judgment as a matter of  
13 law, the case law is very similar. It indicates that under  
14 Federal Rule 50, the motions for judgment as a matter of law  
15 are granted "sparingly and circumspectly". That's at Section  
16 16.2 of New Jersey Federal Civil Procedure, on page 509. And  
17 it cites to a case *Patzig versus O'Neill*, 557 F.2d, 841 (Third  
18 Circuit 1978). So, the Court will review all the motions with  
19 those standards in mind.

20 The first issue -- and the most significant one --  
21 is whether the procedure for selecting the jury array violated  
22 the Equal Protection Clause of the Constitution. I should  
23 note that informally I spoke with the jury manager in Trenton,  
24 and counsel for the Clerk of the United States District Court,  
25 District of New Jersey, in preparing this response. The Court

1 denies the motion with regard to a new trial based on jury  
2 array for several reasons.

3 First, Mr. Klausner is a New Jersey attorney. He  
4 sets forth reasons for a new trial based on jury array based  
5 on statistical calculations as he calculated them. And there  
6 is no evidence that Mr. Klausner is an expert in statistics,  
7 and no evidence of whether his findings are reasonable or  
8 adequate.

9 Mr. Klausner argues that the jury array is  
10 unconstitutional because "the citizen population in Trenton  
11 vicinage is comprised of 7.3 percent African-Americans", and  
12 Mr. Klausner, using the Chi-Square Statistic, indicates that,  
13 "The deviation between the number of African-Americans in the  
14 jury pool and the 7.3 is infinitesimal."

15 He states in another section of his affidavit, that  
16 he, "also employed the same Chi-Square Statistic which is used  
17 to investigate whether distribution of categorical variables  
18 differ from one another. Chi-Square Statistic compares to  
19 tallies or counts of category responses between two  
20 independent groups, using actual numbers not percentages, to  
21 test the hypothesis that the jury pool is no different from  
22 the citizen population of the African-Americans."

23 Before proceeding, I needed to know how many degrees  
24 of freedom existed, since there are two categories. "The  
25 degree of freedom is one of the Chi-Square Statistics test of

1 significance. It shows that the probability of the citizen  
2 pool and the jury pool being statistically similar is  
3 vanishingly small or is exceedingly unlikely. It is much less  
4 than one in a trillion (one times 10 to the minus 12th power).  
5 Hence the calculation is three times 10 to the minus 70.

6 Mr. Klausner makes this assertion even though there  
7 is no evidence that Mr. Klausner is an expert in statistics.  
8 In fact, many people attend law school because they are poor  
9 in math. And as such, without evidence of expertise, there is  
10 no reason to give his certification and his chart setting  
11 forth such contentions any weight.

12 In other cases, the statistical evidence of jury  
13 array was provided by expert testimony. See *Duren versus*  
14 *Missouri*, 439 U.S. 357, at 364-65. There was a "statistical  
15 presentation of evidence".

16 And then in the recent case of *Berghis versus Smith*,  
17 130 Supreme Court, 1382, (2010), "Smith had two experts, a  
18 statistician and an expert in demography and economics." That  
19 is at page 1390. In this case, we have no expert evidence.  
20 So, that the conclusions of Mr. Klausner are unreliable.

21 Second, Mr. Klausner's argument contends that the  
22 municipality of New Brunswick, a city with many  
23 African-Americans, was separate from the Trenton vicinage when  
24 the vicinage was reconfigured several years ago. Klausner  
25 states that, "The 2009 plan eliminates Middlesex County below

1 the Raritan River, excluding the City of New Brunswick, which  
2 was transferred to the Newark Division in 2009." Klausner's  
3 assertion is mistaken. According to the jury manager, New  
4 Brunswick lies within the Trenton vicinage, and its residents  
5 are subject to the jury's call. So that's another imprecision  
6 by Mr. Klausner.

7 Third, Mr. Klausner contends the lists used by the  
8 Court for jury selection are overly restricted. The lists  
9 that are used to comprise the jury pools are the voter  
10 registration list, the driver's license registration list, the  
11 state income tax filers list, and the homestead rebate  
12 applicants list. Mr. Klausner suggests that unemployment  
13 records and welfare records should be included instead of  
14 homestead rebates.

15 The lists used by the jury office are very broad and  
16 capture most of the individuals. According to the jury  
17 manager, these are the same lists that the New Jersey Superior  
18 Court uses. For certain, the lists used do not show any  
19 discriminatory intent to exclude African-Americans, and they  
20 have been previously approved by the Third Circuit and the  
21 Administrative Office of the Court, which, from time to time,  
22 approves the jury plan that is employed here in Trenton.

23 Mr. Klausner makes his statement based on his own  
24 beliefs and not of any expert on jury array. So, once again,  
25 his assertions are to be scrutinized.

1                  Fourth, Mr. Klausner seems to indicate, although it  
2 is not clear, that to be placed in a jury pool a person must  
3 be listed on all four of the lists used by the Court. This is  
4 incorrect. If a person is identified on a single list used by  
5 the Court, his or her name is included on the master jury  
6 list.

7                  The fifth reason for denying Mr. Klausner's request  
8 is that he indicates that 4.03 percent of the eligible  
9 population of the jury wheel was African-American (page 35 of  
10 his brief). According to the jury manager, the actual  
11 percentage is 4.99 percent of the eligible population. Hence,  
12 his statistical evidence as we indicated above is imprecise.

13                 Six, the entire pool of jurors selected for the  
14 period in which the trial occurred was accomplished randomly  
15 and without any discriminatory motive. A report on race and  
16 ethnicity, which is marked as Rider A, is incorporated into  
17 this report. In that report it shows that the number of  
18 blacks within the entire jury pool was 5.54 percent; the  
19 number of whites was 84.13 percent; multi-race was .37  
20 percent; other was 1.48 percent; and unknown is 4.43 percent.

21                 And what is most important is that although this was  
22 the statistics for the entire jury pool, Mr. Klausner is  
23 correct that the persons selected for qualifications to sit on  
24 the Hayer jury, either 25 or 30, were randomly selected, but  
25 no blacks were part of the group. The random selection of the

1 entire pool is most appropriate. And it was done without any  
2 discriminatory motive to exclude any type of race. So Mr.  
3 Klausner's motion to declare a new trial based on the  
4 inadequate number of African-Americans in the jury array is  
5 denied.

6 Another area of concern to Mr. Klausner was the  
7 admission of documents D-10, D-11 and D-12. Mr. Klausner  
8 argues that documents, 10, 11 and 12, were inappropriately  
9 admitted into evidence.

10 I reviewed the record. Mr. Klausner was the one who  
11 requested that D-10, D-11 and D-12 be placed into evidence.  
12 There was no objection from Ms. Gresham, his adversary. So,  
13 without an objection, and based on his motion, all three were  
14 placed into evidence.

15 At trial, the attorney, Mr. Klausner, must object,  
16 rather than request admission of those documents in order to  
17 have any meritorious argument for new trial or judgment as a  
18 matter of law. He didn't do that. So, that request to grant  
19 a new trial based on the admission of D-10, D-11 and D-12 is  
20 denied.

21 Lastly, Mr. Klausner indicates that the testimony of  
22 Laxmi Vazirani should have been denied. I'm not precisely  
23 certain of Mr. Klausner's reasons. Ms. Vazirani was not one  
24 of the most important witnesses. Certainly, her testimony was  
25 not a major concern at trial.

1           At any rate, Ms. Vazirani, the EEO manager,  
2 indicated during her testimony that she communicated with  
3 Julia Friedman, Linda Barker, and Paul Novembre at the time.  
4 Mr. Klausner feels that since Ms. Vazirani never interviewed  
5 any of the plaintiff's witnesses with anyone else present, her  
6 testimony should have been stricken as barred.

7           But it seemed to me that she was familiar with the  
8 issue, she was there at the time the incident occurred, and  
9 she testified as to what she knew about the case. I do not  
10 see any major issue that would require me to reverse or to set  
11 up a new trial because of Ms. Vazirani's testimony.

12           Mr. Klausner also indicates that the EEO guidelines  
13 require an effective investigation of an incident, and Ms.  
14 Vazirani did not conform with the guidelines. The guidelines  
15 state, "Employers shall make clear to employees that it will  
16 protect the confidentiality of harassment allegation to the  
17 extent possible." In my view, an employer cannot guarantee  
18 complete confidentiality since it cannot conduct an effective  
19 investigation, it must reveal certain information to others.

20           However, in this instance, Ms. Vazirani was  
21 conducting a confidential investigation, and she interviewed  
22 those individuals privately and without anyone else present.  
23 She engaged in an appropriate course of conduct. As a result,  
24 Mr. Klausner's request for a new trial based on the testimony  
25 of Ms. Vazirani is denied.

1           So, I reiterate the standard that we set forth  
2 above, that these motions are granted sparingly, and the  
3 granting of a new trial is a decision left to the sound  
4 discretion of the trial judge. So that there doesn't seem to  
5 be any reason, and certainly within my discretion, the case  
6 went forward fairly to both parties, and the jury no-caused  
7 the plaintiff.

8           Quite frankly, there was little credible evidence in  
9 the case of any type of discrimination. And I believe I had  
10 ordered Mr. Klausner a few times during the trial, that there  
11 was a lack of discriminatory motive or actions by UMDNJ.

12 Motion denied.

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| <i>/</i>                                     | <p><b>516</b> [1] - 3:8<br/> <b>557</b> [1] - 3:17<br/> <b>59</b> [1] - 2:20</p> <p><i>/S</i> [1] - 1:23</p>                             | <p><b>4:11</b>, <b>4:13</b>, <b>4:22</b>,<br/> <b>5:23</b>, <b>6:19</b>, <b>8:4</b></p> <p><b>appellate</b> [1] - 3:6<br/> <b>applicants</b> [1] - 6:12<br/> <b>appropriate</b> [3] - 3:4,<br/> <b>8:1</b>, <b>9:23</b></p> <p><b>approved</b> [1] - 6:20<br/> <b>approves</b> [1] - 6:22<br/> <b>area</b> [1] - 8:6<br/> <b>argues</b> [2] - 4:9, <b>8:8</b></p> <p><b>argument</b> [2] - 5:21,<br/> <b>8:17</b></p> <p><b>array</b> [9] - 2:15, <b>3:21</b>,<br/> <b>4:2</b>, <b>4:4</b>, <b>4:9</b>, <b>5:13</b>,<br/> <b>6:24</b>, <b>8:4</b></p> <p><b>assertion</b> [2] - 5:6, <b>6:3</b></p> <p><b>assertions</b> [1] - 6:25</p> <p><b>attend</b> [1] - 5:8<br/> <b>attorney</b> [2] - 4:3, <b>8:15</b></p> | <p><b>category</b> [1] - 4:19<br/> <b>caused</b> [2] - 2:4, <b>10:6</b></p> <p><b>certain</b> [3] - 6:18,<br/> <b>8:23</b>, <b>9:19</b></p> <p><b>Certainly</b> [1] - 8:24<br/> <b>certainly</b> [1] - 10:5<br/> <b>certification</b> [1] - 5:10<br/> <b>Certified</b> [1] - 1:22<br/> <b>chart</b> [1] - 5:10<br/> <b>Chi</b> [4] - 4:12, <b>4:16</b>,<br/> <b>4:18</b>, <b>4:25</b></p> <p><b>Chi-Square</b> [4] - 4:12,<br/> <b>4:16</b>, <b>4:18</b>, <b>4:25</b></p> <p><b>Circuit</b> [2] - 3:18, <b>6:20</b></p> <p><b>circumspectly</b>" [1] -<br/> <b>3:15</b></p> <p><b>cites</b> [2] - 3:10, <b>3:17</b></p> <p><b>citizen</b> [3] - 4:10, <b>4:22</b>,<br/> <b>5:1</b></p> <p><b>city</b> [1] - 5:22</p> <p><b>City</b> [1] - 6:1</p> <p><b>CIVIL</b> [1] - 1:5</p> <p><b>Civil</b> [2] - 3:7, <b>3:16</b></p> <p><b>CLARKSON</b> [1] - 1:9</p> <p><b>Clause</b> [1] - 3:22</p> <p><b>clear</b> [2] - 7:2, <b>9:15</b></p> <p><b>Clerk</b> [1] - 3:24</p> <p><b>committed</b> [1] - 2:6</p> <p><b>communicated</b> [1] -<br/> <b>9:2</b></p> <p><b>compares</b> [1] - 4:18</p> <p><b>complete</b> [1] - 9:18</p> <p><b>comprise</b> [1] - 6:9</p> <p><b>comprised</b> [1] - 4:11</p> <p><b>concern</b> [2] - 8:6, <b>8:25</b></p> <p><b>conclusions</b> [1] - 5:20</p> <p><b>conduct</b> [2] - 9:18,<br/> <b>9:23</b></p> <p><b>conducting</b> [1] - 9:21</p> <p><b>confidential</b> [1] - 9:21</p> <p><b>confidence</b> [2] -<br/> <b>9:16</b>, <b>9:18</b></p> <p><b>conform</b> [1] - 9:14</p> <p><b>constitution</b> [1] - 2:18</p> <p><b>Constitution</b> [1] - 3:22</p> <p><b>contends</b> [2] - 5:21,<br/> <b>6:7</b></p> <p><b>contentions</b> [1] - 5:11</p> <p><b>correct</b> [2] - 1:22, <b>7:23</b></p> <p><b>counsel</b> [1] - 3:24</p> <p><b>counts</b> [1] - 4:19</p> <p><b>County</b> [1] - 5:25</p> <p><b>course</b> [1] - 9:23</p> <p><b>Court</b> [13] - 2:6, <b>2:12</b>,<br/> <b>3:8</b>, <b>3:11</b>, <b>3:18</b>, <b>3:24</b>,<br/> <b>3:25</b>, <b>5:17</b>, <b>6:8</b>, <b>6:18</b>,<br/> <b>6:21</b>, <b>7:3</b>, <b>7:5</b></p> <p><b>COURT</b> [3] - 1:1, <b>1:13</b>,<br/> <b>2:1</b></p> | <p><b>court</b> [5] - 2:20, <b>2:24</b>,<br/> <b>3:2</b>, <b>3:4</b>, <b>3:6</b></p> <p><b>COURT'S</b> [1] - 1:17</p> <p><b>COURTHOUSE</b> [1] -<br/> <b>1:9</b></p> <p><b>credible</b> [1] - 10:8</p> |
| <b>0</b>                                     | <p><b>602</b> [1] - 2:9</p>  | <p><b>6</b></p>  | <p><b>D</b></p>  |  |
| <b>07-251</b> [1] - 1:5                      |  |  |  |  |
| <b>08608</b> [1] - 1:10                      |  | <p><b>7</b></p>  |  |  |
| <b>1</b>                                     | <p><b>7.3</b> [2] - 4:11, <b>4:14</b></p>  | <p><b>8</b></p>  | <p><b>B</b></p>  |  |
| <b>1</b> [1] - 2:6                           | <p><b>70</b> [1] - 5:5</p>   |  |  |  |
| <b>1,48</b> [1] - 7:20                       | <p><b>753</b> [1] - 1:22</p>   |  |  |  |
| <b>10</b> [3] - 5:4, <b>5:5</b> , <b>8:8</b> |  |  |  |  |
| <b>11</b> [1] - 8:8                          |  |  |  |  |
| <b>12</b> [1] - 8:8                          |  |  |  |  |
| <b>12th</b> [1] - 5:4                        | <p><b>801</b> [1] - 2:9</p>  |  |  |  |
| <b>130</b> [1] - 5:17                        | <p><b>803</b> [1] - 2:9</p>  |  |  |  |
| <b>1382</b> [1] - 5:17                       | <p><b>805</b> [1] - 2:9</p>  |  |  |  |
| <b>1390</b> [1] - 5:19                       | <p><b>84.13</b> [1] - 7:19</p>   |  |  |  |
| <b>16.2</b> [1] - 3:16                       | <p><b>841</b> [1] - 3:17</p>   |  |  |  |
| <b>16.3</b> [1] - 3:8                        | <p><b>856</b> [1] - 1:24</p>   |  |  |  |
| <b>1978)</b> [1] - 3:18                      | <p><b>889-4761</b> [1] - 1:24</p>  |  |  |  |
| <b>2</b>                                     | <p><b>A</b></p>  |  |  |  |
| <b>2</b> [1] - 2:7                           | <p><b>able</b> [1] - 3:5</p>   |  |  |  |
| <b>2009</b> [2] - 5:25, <b>6:2</b>           | <p><b>accomplished</b> [1] -<br/> <b>7:14</b></p>  |  |  |  |
| <b>2010</b> [1] - 5:17                       | <p><b>According</b> [4] - 2:12,<br/> <b>6:3</b>, <b>6:16</b>, <b>7:10</b></p>  |  |  |  |
| <b>2011</b> [2] - 1:9, <b>3:7</b>            | <p><b>action</b> [1] - 2:23</p>  |  |  |  |
| <b>25</b> [2] - 1:9, <b>7:24</b>             | <p><b>actions</b> [1] - 10:11</p>  |  |  |  |
| <b>28</b> [1] - 1:22                         | <p><b>actual</b> [2] - 4:20, <b>7:10</b></p>   |  |  |  |
| <b>3</b>                                     | <p><b>addition</b> [1] - 3:10</p>  |  |  |  |
| <b>3</b> [1] - 2:9                           | <p><b>adequate</b> [1] - 4:8</p>   |  |  |  |
| <b>30</b> [1] - 7:24                         | <p><b>Administrative</b> [1] -<br/> <b>6:21</b></p>  |  |  |  |
| <b>35</b> [1] - 7:9                          | <p><b>admission</b> [3] - 8:7,<br/> <b>8:16</b>, <b>8:19</b></p>   |  |  |  |
| <b>357</b> [1] - 5:14                        | <p><b>admitted</b> [1] - 8:9</p>   |  |  |  |
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